

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

UNITED STATES OF AMERICA,

Criminal Action
No. 1:08CR369-2

Plaintiff,

vs.

Greensboro, North Carolina
February 24, 2010

TOMMY LEWIS BENNETT, JR.,

Defendant.

1

TRANSCRIPT OF SENTENCING PROCEEDINGS

BEFORE THE HONORABLE N. CARLTON TILLEY, JR.

UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Government: PAUL WEINMAN, ESQUIRE
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DIRECT CROSS REDIRECT RECROSS

WITNESSES FOR THE
DEFENSE:

Tommy Bennett

Officer Lagrand

1 (Defendant is present.)

2 MR. WEINMAN: Your Honor, the next matter is
3 1:08CR369-2. David Freedman is here representing Tommy
4 Lewis Bennett, Jr. The matter is on for imposition of
5 sentence.

6 THE COURT: Mr. Bennett, have you read your
7 presentence report?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: And talked with Mr. Freedman about it?

10 THE DEFENDANT: Yes, sir.

13 MR. FREEDMAN: There were no objections to the
14 presentence report.

15 THE COURT: And do you agree with that,
16 Mr. Bennett?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Mr. Weinman, you do not have any
19 objections?

20 MR. WEINMAN: We do not have any.

THE COURT: In that event, I will adopt the presentence report, both with regard to the factual content and the guideline applications. The total offense level is a 27. The criminal history category is a three. The guideline range is 120 months. The supervised release

1 range, five years. Fine range, 12,500 to 4 million. There
2 is a \$100 special assessment.

3 Will there be evidence, Mr. Weinman?

4 MR. WEINMAN: Not from the Government, Your Honor.

5 THE COURT: Mr. Freedman.

6 MR. FREEDMAN: Not as to the guidelines. I would
7 like to allow Mr. Bennett to be heard as to his level of
8 cooperation, for the Court to take that into consideration.

9 THE COURT: He can come around.

10 (TOMMY LEWIS BENNETT, THE DEFENDANT HEREIN, WAS
11 SWORN.)

12 **DIRECT EXAMINATION**

13 BY MR. FREEDMAN

14 Q. Would you state your name for the Court.

15 A. Tommy Lewis Bennett, Jr.

16 Q. Mr. Bennett, you pled guilty to conspiracy charges in
17 this case; is that correct?

18 A. Yes, sir.

19 Q. Did you at some point begin your attempt at
20 cooperation, to cooperate with the Government and various
21 state agencies?

22 A. Yes, sir.

23 Q. Do you remember when that started?

24 A. It started around January 16, 18th.

25 Q. It's been over a year; is that correct, '09?

1 A. Yes, sir.

2 Q. You started your debriefings prior to pleading guilty
3 in this case?

4 A. Yes, sir.

5 Q. Who was the first agent or what was the first agency
6 that you provided information to?

7 A. First agency I provided information to was Montalvo,
8 ATF, and Greensboro Police Department Narcotics, Officer
9 Marsh.

10 Q. That was at the Winston-Salem Jail; is that correct?

11 A. Yes, sir.

12 Q. And how many people did you provide information on at
13 that time? Do you remember, approximately?

14 A. Twenty close friends of mine at that time.

15 Q. And the people that you provided information on, were
16 they all living in one area of the state?

17 A. They all resided in Greensboro, Guilford County. I
18 mean, here in Greensboro.

19 Q. Do you know if you provided any information at that
20 time on people either in Richmond County or Scotland County?

21 A. Not at that current time, but on my visits.

22 Q. Are you aware of any arrests involving people that you
23 provided information on the first go-around?

24 A. Yes. On my first visit with Agent Montalvo, Dejaun
25 Mitchell was a close friend of mine at the time. He was the

1 first person that was arrested in Greensboro.

2 Q. Do you know what he was arrested for?

3 A. Yeah. They seized money, marijuana and Ectasy pills,
4 and some marijuana out of the toilet. Right after the
5 arrest was made, Agent Montalvo sent Officer Marsh to
6 debrief me, and he wanted to know about a person that I used
7 to work for, Alex Little. I gave information on him. The
8 information I gave on him was based off of our work history
9 and we used to work together in landscaping, and --

10 Q. And he was arrested on a firearms charge?

11 A. Yes, sir.

12 Q. Did you talk to Marsh about other individuals at that
13 time?

14 A. Yes. At that time I spoke about guys that I used to
15 hang out with at the club.

16 Q. That's in Greensboro?

17 A. In Greensboro.

18 Q. Did you provide information about people outside of
19 Guilford County at that time?

20 A. Yes, sir. At that time, that's when I started to
21 provide information on friends, childhood friends from back
22 home, Rockingham and Scotland County -- Richmond County and
23 Scotland County, I'm sorry.

24 Q. When was your next debriefing after that?

25 A. All of this took place before my birthday. It was the

1 month of February.

2 Q. That took place still while you were in Forsyth County
3 Jail?

4 A. Correct. Your Honor, this next debriefing came March
5 the 18th, first day that I was at Alamance County, March the
6 18th, and I spoke with Detective Banks. He's Goodykoontz's
7 partner.

8 Q. Do you know who Detective Banks is --

9 A. Greensboro Police Department.

10 Q. Do you remember who you provided him information on at
11 that time?

12 A. At the time it was Dallas and Dean. I'm not sure of
13 their last them. But he had a photo of them and he needed
14 to know the identity of the guys. Your Honor, I gave them
15 the identity, and he said if this check out, I'll be back to
16 see you the next week. So when he came back the next week,
17 he brought Officer Lagrand of Richmond County.

18 Q. Officer Lagrand is present in court?

19 A. Correct. So I spoke with -- on next visit, I spoke
20 with Officer Lagrand and he was inquiring about -- the main
21 person he was inquiring about was my cousin Paul Bright. He
22 had photos as well, and I put identity to the photos as
23 well. He was asking could I assist in a buy or get him to
24 bring something and at that current time I tried to put
25 everything into a perspective, but at the same time, I gave

1 him other drug dealers that was based around my cousin
2 Paul's drug business at the time.

3 Q. In Rockingham County?

4 A. In Rockingham and Scotland County.

5 Q. I'm sorry, Richmond County?

6 A. Richmond County and Scotland County.

7 Q. Do you remember the other names you gave?

8 A. Besides Paul, I gave Anthony Promise, Tosha McClain,
9 Kwansy Russell, Deddrick McKenzie.

10 Q. And you were in custody this whole time, correct?

11 A. Correct.

12 Q. So you were not in a position to set up buys or sells?

13 A. I tried. I tried. I tried on two or three occasions.
14 Once with Lagrand in Alamance County through the phone, but
15 they wasn't my friends at the time, wasn't picking up the
16 phone, so I took another route and involved my wife in the
17 scheme or plan to try to lure them in as well.

18 Q. Who is it that you were trying to set up the buy for?

19 A. Kwansy Russell.

20 Q. That was unsuccessful?

21 A. It was stalled. It was a stall tactic, because they
22 wanted my wife to drive to Laurinburg, to Rockingham to do
23 the initial buy there and it wasn't -- the focus wasn't on
24 Kwansy, it was just to lure Paul back, so they wanted a
25 direct hit right then and she's never did -- she's never --

1 Q. She was not involved?

2 A. -- with drugs at all. But she was willing to try to
3 assist in the matter on several occasions with me.

4 Q. Was there eventually a search for Paul Bright?

5 A. Yes. This occurred on -- it was one of the first two
6 visits when I was with -- I was in Alamance County, he came
7 to see me. He asked for a place of residence and I told him
8 several different locations that my cousin Paul had stayed,
9 and a search was done at his home, though, where him and his
10 wife and his kids resided, not the place where he just sell
11 drugs at, but it was the wrong house.

12 When he came back, I told him that was the wrong house,
13 because I had just spoken to Paul over the phone and they
14 just told me the police had just left the house, so by time
15 Lagrand got to see me on my next visit, I spoke of it with
16 him and he had me draw a map. I drew the map of this
17 location called Green Pond, and I showed him the exact
18 trailer.

19 I told him about the car that my cousin had just got
20 painted and he told me what color it was. I told him it was
21 the car he maneuvered drugs around in. I told him about,
22 like I said, the trailer and the time frame they usually be
23 out there, and he took that information and went on -- I
24 tried to further his investigation, but at the same time,
25 this is when I explain to Sabatosky -- Detective Sabatosky

1 out of Scotland County.

2 Q. Out of Scotland County?

3 A. Yes. This is when she contacted -- she was in search
4 of trying to get in touch with who she needed to get in
5 touch with involving a couple guys that was in Greensboro,
6 but they resided in -- their place of home was in Scotland
7 County, but they came to Greensboro to do business that was
8 affiliated with me in my conspiracy.

9 Q. Did you provide information on them?

10 A. Yes. I provided information on that as well, and the
11 guy which was Lorenzo McClain, we all had the same state
12 charge before they pleaded out, so they were wanting to know
13 information about them. She wanted to know information
14 about him and his gang affiliation, so I gave it to her.

15 Then within March or April, that when she contacted --
16 tried to contact you and Lagrand and I'm not sure if
17 Mr. Weinman at the time. It was federal DA, because at the
18 time I didn't really know who my DA was because I had David
19 Folmar and he wasn't on my case any more.

20 Q. Do you know whether any arrests were made from what you
21 told Detective Sabatosky?

22 A. What I told Sabatosky, that's what led to arrest with
23 Kwansy Russell and McClain on guns possession. She was
24 trying to get in touch with -- how she prompt the
25 information through the Court and through you, and it was

1 denied that and she spoke with you over the phone, she said
2 that, well, she stated everything to you there, that they
3 said that no information dealing from outside county would
4 be acceptable in the Court, and that's --

5 Q. So you know there were several arrests made of people;
6 Kwansy Russell, Toshia McClain, you know they were arrested,
7 you know you provided information on them and of course
8 you're in jail and so you don't know whether the information
9 you gave --

10 A. I was in full contact with these people all the way up
11 until they was exposed to my cooperation, the information
12 that I was providing on them. Once the charges were brought
13 about to them, that's when my contact with my friends was
14 cut off.

15 Q. Were you aware whether or not your name was getting out
16 there?

17 A. Yeah. I was aware my name was getting out, roughly
18 around my last visit with Officer Lagrand.

19 Q. Do you know about when that was?

20 A. August, September, maybe.

21 Q. How were you aware that your name was getting out
22 there?

23 A. From the previous phone conversation that I had with
24 Deddrick McKenzie and Kwansy Russell, and it went -- I
25 called and I was like, you know, how is everything going out

1 there, and they was like, you're trying to set us up, your
2 wife called my phone to purchase drugs and then she called
3 back saying that she can't make it down at that time, so
4 they knew I was federal by then. They knew I was fed
5 because by initial start nobody knew I was in federal
6 custody.

7 Q. Do you know whether your name appeared on any
8 paperwork?

9 A. My name -- I'm not sure if it appeared on a warrant,
10 but I know when they went in Alex Little house, I know that
11 my name was stated, because his wife and myself, we are
12 close affiliated friends, and when I called one day to have
13 her call my wife, she said, I can't believe that you did
14 that, you sent the police to my house and my kids --

15 Q. The people that you are providing information against,
16 what level are they in terms of drug dealing?

17 A. Major dealers.

18 Q. When you say major dealers, what sort of amounts do
19 those people --

20 A. At the time when I left the streets, all of them was
21 kilos or half a kilo.

22 Q. Do you know whether these people also carried firearms
23 with them?

24 A. Yes. Kwansy Russell and Lorenzo McClain are known gang
25 members.

1 Q. By providing information, have you put you and your
2 family at risk?

3 A. I put my wife at risk. Right now I'm at -- I'm not
4 saying at high risk as she is, because I'm in federal
5 custody and it's pretty much safe for me, but I'm not sure
6 about my wife. She has to continue to go to work and
7 provide for our kids and provide for me as well.

8 Q. Do you know about how many meetings you've had with
9 Officer Lagrand?

10 A. Four, five, maybe with Lagrand.

11 Q. And how many times did you talk to Detective Sabatosky?

12 A. I talked with Sabatosky five, six, times. It was all
13 through phone conversations.

14 Q. She never came to see you at the jail?

15 A. She couldn't come to see me because they was waiting on
16 consent because she said she needed permission from a
17 prosecutor or through my attorney to speak with me at that
18 time.

19 Q. But she wanted your wife to set up a deal; is that
20 correct?

21 A. Later on down, she wanted my wife to do a deal, but it
22 was told to her that my wife could not participate in a
23 third-party activity, so.....

24 Q. You were informed at some point that if your wife
25 participated in a third-party deal, you may get no credit

1 for that?

2 A. I was informed of that roughly around November of '09.

3 Q. What other agencies did you meet with?

4 A. I spoke with ATF, DEA, SBI, IRS. I've assisted IRS
5 with information on some more friends that dealing with
6 money laundering, the identity theft.

7 Q. What agent was that?

8 A. Agent Moses.

9 Q. Can you name any other agent you've met with?

10 A. Just Greensboro narcotics, December the 4th, I spoke
11 with them.

12 Q. That was Detective James?

13 A. Detective James and Goodykoontz. They said it was a
14 federal investigation. They had contacted my wife and had
15 me contact them and try to do -- well, I set up a buy for my
16 wife to do. They said it was approved, because they said it
17 was no problem, so they had me contact another friend of
18 mine, which was Wayne Woolridge. I contacted him on the
19 phone and told him to set up a quarter or half ounce deal,
20 whatever she needs, just have her call. So when she called,
21 they was not ready to secure the deal. They didn't have
22 enough officers at the time to protect her safety, so they
23 didn't want to go through with it. That was on the first
24 occasion. Second occasion was the same thing, so it was
25 like the third occasion, roughly around December right after

1 Christmas, she called and he said, yes, he was getting his
2 hair done. He called --

3 THE COURT: Who is "he"?

4 THE WITNESS: Wayne Woolridge, Your Honor. He
5 called her back and then he told her that he don't mess
6 around no more, he don't sell drugs no more is what he was
7 referring to, and he felt like she was trying to set him up
8 at the time. Detective James said that was enough at that
9 time to build a conspiracy case because he was already under
10 federal investigation based on information that I provided
11 January the 16th, because he was one of my close friends at
12 the time.

13 BY MR. FREEDMAN

14 Q. Do you know whether he has been -- do you have any
15 information as to whether he's been arrested yet?

16 A. I don't know. I just know that he told my wife that a
17 buy was not even necessary, that he just needed a contact
18 over the phone and place of residence where he was residing
19 at.

20 Q. Do you have an estimate as to how many times you've
21 been debriefed?

22 A. From everybody, it is roughly around 15 times.

23 Q. Have you ever said no to a federal or state agent when
24 they have come to talk to you at the jail?

25 A. No, sir.

1 MR. FREEDMAN: I have no further questions, Your
2 Honor.

3 THE COURT: Mr. Weinman.

4 **CROSS-EXAMINATION**

5 BY MR. WEINMAN

6 Q. Mr. Bennett, according to your understanding, how many
7 people have been arrested or indicted based on information
8 provided to law enforcement by you?

9 A. Based on my understanding?

10 Q. Yes.

11 A. Based on my understanding, I say at least four people.

12 Q. Who is number one?

13 A. Dejaun Mitchell.

14 Q. And what agency did you give that information to?

15 A. ATF in Greensboro.

16 Q. And who specifically?

17 A. Montalvo.

18 Q. Who is the next one?

19 A. Alex Little.

20 Q. And who did you give that information to?

21 A. Officer Marsh, Greensboro Police Department.

22 Q. Who is the next one?

23 A. Kwansy Russell?

24 Q. Who did you give information about Mr. Russell to?

25 A. To Officer Marsh and Officer Blanks, if I'm saying his

1 name correct.

2 Q. And who is the fourth one?

3 A. Fourth one is Tosha McClain.

4 Q. Tosha McClain?

5 A. Yes, sir.

6 THE COURT: Is that a woman?

7 THE WITNESS: Yes, sir.

8 BY MR. WEINMAN

9 Q. What agency was it and who was the agent you gave that
10 information to?

11 A. I gave that information to Officer Marsh as well, and I
12 also gave it to Sabatosky, Detective Sabatosky and Officer
13 Lagrand in Greensboro Police Department, which was
14 Greensboro Police Department, sir.

15 Q. Anybody else other than those four?

16 A. I just know the alias of the guys, the guy that
17 initially led to me being able to speak to Officer Lagrand,
18 the very first photo.

19 Q. What was his name?

20 A. His name was Dallas.

21 Q. Dallas?

22 A. Yes.

23 Q. And you gave that information to whom?

24 A. Officer Banks.

25 Q. That's Greensboro Police Department?

1 A. Yes, sir.

2 Q. Anyone else?

3 A. No, sir.

4 MR. FREEDMAN: I have no further questions.

5 THE COURT: Mr. Freedman.

6 MR. FREEDMAN: Your Honor, both Mr. Bennett and I
7 felt it important for Mr. Bennett to testify so the Court
8 could understand sort of the breath and scope of his
9 cooperation. I know certain things are under investigation.
10 I know some of the people he provided information on will
11 probably never be arrested, but I don't know that I ever
12 represented anyone who has spent that much time being
13 debriefed by every agency around the state, and I think it's
14 something the Court -- I would contend it is something the
15 Court can take into consideration, other than just the level
16 of people he's cooperated, he creates both a risk to himself
17 and family by doing so. Clearly his name is getting out
18 around the state for having done that, and put he and his
19 family at great risk.

20 THE COURT: Do you have other evidence?

21 MR. FREEDMAN: Your Honor, I don't have other
22 evidence. I don't believe there is a contest that he's
23 talked to all of these various agents and provided
24 information.

25 THE COURT: But what he sees as valuable

1 information may not be valuable to the officer, and it may
2 not be valuable to the United States Attorney's Office, and
3 if I'm supposed to -- if you just want me to know the level
4 of his willingness to cooperate, that's one thing, but if
5 you're wanting me to gauge how helpful that cooperation is,
6 he's not in a position really to know.

7 MR. FREEDMAN: No, Your Honor. But under 5K1.1, I
8 know there are various things the Court can take into
9 consideration when someone has cooperated; that's the
10 timeliness of their cooperation, the level of their
11 cooperation, and the risk of harm that he creates for
12 himself by cooperating. Those are all the factors under
13 5K1.1, Your Honor, I would contend the Court can take into
14 consideration in addition to how many arrests.

15 Clearly we know the Government puts some value on
16 it or they wouldn't have filed the motion to start with. I
17 just believe by statute the Court can take other things into
18 consideration, just beyond how many people were arrested.

19 THE COURT: I think you need to make a greater
20 showing of that for me to make that finding, Mr. Freedman.
21 Now, Mr. Bennett has much to gain by his testimony, and he
22 may be a truthful person, I don't know, but he certainly is
23 an interesting witness in his testimony. There is no one
24 else to corroborate this, so all I have to go on is what
25 he's saying.

1 MR. FREEDMAN: Your Honor, I would -- I believe
2 Mr. Weinman has talked to the various agencies.

3 THE COURT: Well, maybe Mr. Weinman can --

4 MR. FREEDMAN: I don't know that Mr. Weinman can
5 attest to any more arrests than the arrests he has labeled
6 here, but I don't believe Mr. Weinman has anything to
7 contradict what Mr. Bennett has said about his level; how
8 many times he's been debriefed, all the different agencies
9 that he's talked to and what he's tried to do.

10 THE COURT: Okay. Mr. Weinman, do you have
11 evidence?

12 MR. WEINMAN: No, Your Honor. In speaking to the
13 agents, and I haven't spoken to everybody that Mr. Bennett
14 mentioned, but I spoke to Agent Montalvo at least twice. I
15 spoke to John Marsh a couple of times, and I've spoken to
16 Officer Lagrand. The only concrete statement I've gotten
17 from any of them was from Officer Marsh, who said that a
18 state possession of a firearm felon case was made based on
19 information provided by Mr. Bennett. This specific
20 information he provided today is the first I heard of it.
21 Obviously I will check it out, but it's the first I heard of
22 it.

23 MR. FREEDMAN: I have Officer Lagrand here who can
24 testify about how many times he did debrief Mr. Bennett, if
25 that would be helpful for the Court.

1 THE COURT: It's your case, Mr. Freedman.

2 **(OFFICER LAGRAND, DEFENSE WITNESS, WAS SWORN.)**

3 **DIRECT EXAMINATION**

4 BY MR. FREEDMAN

5 Q. Would you state your name.

6 A. Officer Lagrand.

7 Q. Officer Lagrand, how are you employed?

8 A. Rockingham Police Department.

9 Q. And at some point, you had the opportunity to talk to
10 Tommy Bennett?

11 A. Yes.

12 Q. How was it that you got information that led you to
13 talk to Mr. Bennett?

14 A. Through Detective Blanks, Greensboro Police Department.

15 Q. And specifically how did that come about?

16 A. Detective Blanks contacted me and asked me if I knew of
17 a Paul Bright and Anthony Promise, who resided -- Bright
18 resided in Rockingham. Promise, he wasn't sure if he
19 resided down there or not, and I told him that I would check
20 into it.

21 Q. That was the result of a debrief that he had with
22 Mr. Bennett; is that correct?

23 A. Yes.

24 Q. And were you aware of those two names?

25 A. I had heard of the Paul Bright, but I wasn't too

1 familiar with his dealings.

2 Q. But he was somebody who was under investigation in
3 Richmond County?

4 A. He was known to us as a drug dealer. Nobody was
5 actively pursuing him.

6 Q. But the information that -- were you asked to come up
7 to speak to Mr. Bennett or did you do that on your own?

8 A. When Detective Blanks mentioned it to me, he informed
9 me that he was coming back to talk to Mr. Bennett and asked
10 me if I could come along to also ask questions.

11 Q. And so you went up to Alamance County?

12 A. Yes.

13 Q. And did you talk to Mr. Bennett?

14 A. That's correct.

15 Q. Do you remember what was discussed in the first
16 debriefing?

17 A. As far as I can recall, we talked about Anthony Promise
18 and Paul Bright.

19 Q. Did he also talk to you about a Kwansy Russell?

20 A. That name was brought up at some point, yes.

21 Q. Did you have pictures that you brought up with you?

22 A. Yes, at that time, I did.

23 Q. And the pictures you brought up with you were people
24 who you believed, or at least Richmond, Rockingham Police
25 believed to be involved with drug dealing?

1 A. Yes.

2 Q. And he identified Paul Bright in the picture for you?

3 A. Paul Bright and Anthony Promise.

4 Q. Do you remember him identifying Kwansy Russell?

5 A. The pictures that I brought at that time, I don't think

6 Kwansy was in that. It was at a different time I met with

7 him.

8 Q. At a later time?

9 A. Yes.

10 Q. Do you remember what else was discussed at the first

11 debrief?

12 A. Other than Paul Bright and Kwansy and Anthony, no.

13 Q. Do you know how long -- did you take notes from that?

14 A. I did take notes.

15 Q. Do you know about how long you were up there? Did you

16 meet with him by yourself?

17 A. The first meeting, I did not meet with him by myself.

18 It was Detective Blanks and Lieutenant Freedman with my

19 agency. I know on two other occasions I met with him by

20 myself.

21 Q. Do you know how many occasions you met with him at all?

22 A. At least four.

23 Q. And the reason why you kept coming back to see him was

24 why?

25 A. Trying to get more information on Bright and Promise.

1 The information he provided on Kwansy and another subject
2 that I don't remember his name, they were out of our
3 jurisdiction and we were trying to set something up with his
4 wife, and finally told him that third-party information or
5 cooperation wouldn't be too helpful to his case.

6 Q. But you kept coming up to see him because he had what
7 you believed would be useful information for you?

8 A. He had information on some of the guys we were trying
9 to find out stuff on.

10 Q. And he was always very cooperative with you every time
11 you met with him?

12 A. Yes.

13 Q. And he tried to provide all the -- strike that.

14 As a result of some information he provided to you, you
15 actually went into Paul Bright's house?

16 A. Yes. A consent search was done. We actually stopped
17 Mr. Bright on a traffic stop and Lieutenant Freedman spoke
18 with him and got consent to go back to his house since
19 that's where he was coming from. During the consent search,
20 nothing was located.

21 Q. But did you talk with Mr. Bennett after that; do you
22 remember?

23 A. I want to say I did talk to him at least once after
24 that.

25 Q. And I believe we talked this morning, and Kwansy

1 Russell was arrested; is that correct?

2 A. He was arrested by a different agency, not my agency.

3 Q. During a shoot-out?

4 A. That's correct.

5 Q. Information that Mr. Bennett provided to you, your
6 lieutenant provided to the SBI or other districts?

7 A. That's correct.

8 Q. Do you know which counties his information was provided
9 for? Do you know which county it went to?

10 A. Once he provided it to the SBI, I'm not sure which
11 county they contact -- if they contacted any county. I'm
12 not aware.

13 Q. Do you remember who the information was given to that
14 went to the SBI?

15 A. Agent Sullivan.

16 Q. And he's located where?

17 A. I want to say out of Moore County.

18 THE COURT: Fayetteville, maybe?

19 THE WITNESS: Could be Fayetteville.

20 BY MR. FREEDMAN

21 Q. Mr. Promise, at least at this the point, has not been
22 arrested; is that correct?

23 A. That's correct. Not by my agency he has not.

24 Q. There was also a Tosha McClain who Mr. Bennett had
25 talked about who has been arrested, correct?

1 A. By a different agency, yes.

2 Q. By Scotland County?

3 A. Might have been Cumberland County. Fayetteville,
4 Cumberland County.

5 Q. Do you know the level of dealer Tosha McClain was?

6 A. No. I never made contact about Tosha McClain.

7 Q. Do you know what level dealer Kwansy Russell was?

8 A. No, sir.

9 Q. Did Mr. Bennett -- the information that Mr. Bennett was
10 providing to you was on people you knew to be drug dealers,
11 you are just saying that you were unable to do anything
12 about that information?

13 A. The information he provided to me, I only knew of Paul
14 Bright, and he mentioned Anthony Promise. The other two, I
15 had no idea who they were or what their dealings were about
16 with Mr. Bennett until I met about him and then when I
17 brought the pictures, I think on the third visit, I had
18 mentioned them on the second visit and he said, yes, the guy
19 is also -- and that was Mr. Russell, but I didn't know
20 Mr. Russell prior to meeting Mr. Bennett.

21 Q. He is the one who brought up Mr. Russell?

22 A. Correct.

23 Q. And the one who brought up Tosha McClain?

24 A. Correct.

25 Q. Who proved to be drug dealers?

1 A. That's about another agency.

2 Q. I understand. I'm not saying --

3 A. As far as I know about the other agency, they were

4 arrested on a shoot-out during a drug deal. And

5 Ms. McClain, I guess it was on a drug deal also, or involved

6 in drugs.

7 Q. The reason why communication broke down between you

8 and -- or the reason why you stopped going to Mr. Bennett

9 was, Ms. Morrison, who is back here, was going to set up or

10 attempt to set up a few drug deals, but then it became

11 apparent that Mr. Bennett would not receive credit for

12 third-party cooperation?

13 A. That's correct. And the guys that he provided or

14 wanted to do the drug deals about were out of my

15 jurisdiction.

16 Q. But you were brought into this by the Greensboro Police

17 Department?

18 A. That's correct.

19 MR. FREEDMAN: May I have just a minute, Your

20 Honor?

21 THE COURT: Surely.

22 MR. FREEDMAN: I have no further questions, Your

23 Honor.

24 THE COURT: Mr. Weinman.

25 MR. WEINMAN: No questions. May he be excused,

1 Your Honor?

2 MR. FREEDMAN: No objection.

3 THE COURT: He may. Thank you, sir.

4 MR. FREEDMAN: Your Honor, that would be the
5 evidence that I would have today to present.

6 THE COURT: This was continued from last December
7 so you could get evidence.

8 MR. FREEDMAN: I understand, Your Honor, because I
9 was having trouble getting up about Officer Lagrand, which
10 is why we subpoenaed him today, and then trying to get him
11 here yesterday was a difficult --

12 THE COURT: You are not doing your investigation
13 through court settings?

14 MR. FREEDMAN: Well, Your Honor, if officers won't
15 return my phone call, then I don't believe I have a choice
16 but to issue a subpoena because --

17 THE COURT: You could have subpoenaed each of them
18 for today, could you not, if that was --

19 MR. FREEDMAN: I would have, Your Honor. I didn't
20 know -- I never believed this was a question about that
21 Mr. Bennett had been cooperative and had been debriefed 13
22 or 14 times. I never -- I believe the only question that
23 came was whether -- the only information I didn't have until
24 talking to Officer Lagrand is how Kwansy Russell and Tosha
25 McClain were arrested, and he didn't know until today when

1 he called the SBI agent and called the various agencies, and
2 I didn't know where they were arrested. Mr. Bennett
3 provided me information knowing these people had been
4 arrested. I tried to get Officer Lagrand beforehand on how
5 they were arrested, and I was unable to determine that until
6 today. Officer Lagrand didn't know that until today until
7 Mr. Weinman and I were downstairs making phone calls.

8 I'm not trying to waste the Court's time. I'm not
9 trying to utilize the Court's time for my investigation, but
10 there is some times I don't have access to someone myself,
11 but if an officer won't return my phone calls, Your Honor, I
12 want to make sure Mr. Bennett's rights are protected.

13 THE COURT: All right. Well --

14 MR. FREEDMAN: In terms of Marsh and Montalvo, I
15 don't believe there is any question -- or Agent Moses or
16 Blanks or any of the other people, I don't believe there is
17 any question that he's talked to them on numerous occasions.

18 THE COURT: Okay. And, you know, I'm not doubting
19 that, but I have heard nothing today which would make me
20 think he is deserving of more than the Government has
21 recommended.

22 MR. FREEDMAN: Well, Your Honor, all I can say
23 is -- and I understand what substantial assistance is and
24 appreciate the Government filed the 5K1.1 and I told
25 Mr. Weinman that.

1 THE COURT: I'll go to the bottom end of the
2 advisory guideline range to start off with, but other than
3 those two things, I've heard nothing that would make me go
4 beyond that.

5 MR. FREEDMAN: Well, Your Honor, again, you heard
6 my argument. The only argument would be the level of danger
7 that he has put himself in and just how much of an effort
8 he's given to the process. I know people who give
9 information and never get a 5K1.1. I understand that. I've
10 been through that situation myself. I've explained to
11 Mr. Bennett the possibility that if some of this information
12 that has been given bears fruit in the future, he is
13 entitled to a Rule 35 motion, assuming the Government sees
14 fit on that. We just believed it was important for the
15 Court to see just what an effort Mr. Bennett --

16 THE COURT: Sure. I'm happy to have heard what he
17 did, and I respect him for doing that, but I don't see how,
18 considering what I have heard today, that would create more
19 than what the Government has recommended.

20 MR. FREEDMAN: Yes, Your Honor. Thank you.

21 THE COURT: Mr. Weinman, maybe you --

22 MR. WEINMAN: Don't care to be heard further, Your
23 Honor.

24 THE COURT: Mr. Bennett, is there anything else
25 that you would like to say?

1 THE DEFENDANT: No, sir.

2 THE COURT: Do you want additional time to try to
3 find out more?

4 MR. FREEDMAN: Well, Your Honor, I don't know that
5 I will be able to provide more to the Court in terms of
6 actual arrests that were made. I believe the only thing I
7 could provide to the Court would be other agents to tell you
8 why they went to see him time and time again. I would have
9 no problem, Your Honor, asking them to be here, providing
10 exactly what Mr. Bennett has done, to see what --

11 THE COURT: Well, you know, I mean, how fruitful
12 has that been? That is the real question in my mind. I
13 really don't know about danger. I mean, there is a big open
14 end on that.

15 MR. FREEDMAN: Obviously, Your Honor, that's very
16 subjective.

17 THE COURT: I understand it.

18 MR. FREEDMAN: And I don't have any -- I don't
19 believe I have evidence of any particular threats, other
20 than comments made to him, we know you're fed, we know what
21 you are trying to do, but in terms of being able to provide
22 anything objective to the Court, I don't have anything.

23 THE COURT: So mainly what I have heard is an
24 effort, and I commend Mr. Bennett for the effort, but I
25 don't see how that would entitle him to more.

1 MR. FREEDMAN: Your Honor, actually the only other
2 arrest, and I don't know how much weight the Government will
3 give it, I think we're fairly certain there were two arrests
4 that were made. One was on Alex Little, which was a gun
5 charge, and I believe that is what's referenced in the
6 5K1.1. There was also an initial arrest on a Dejuan
7 Mitchell in which there was marijuana and Ectasy pills,
8 which would probably be not much more than a state district
9 court case, and I don't know whether the Government would
10 give any credit for that or not.

11 THE COURT: And I don't, either.

12 MR. FREEDMAN: But I am fairly certain that those
13 were the two arrests that were made from the information
14 that he gave.

15 THE COURT: You know, as I sit here now, I can't
16 make that determination, Mr. Freedman. I can understand he
17 gave information about a person who was arrested. How much
18 of that was based upon information given by Mr. Bennett, I
19 don't know. How much was based on information from other
20 sources, I don't know.

21 MR. FREEDMAN: I believe the information of the
22 person who was arrested with the gun came directly from
23 Mr. Bennett.

24 THE COURT: Well, see, I can't accept that as
25 evidence, Mr. Freedman.

1 (Mr. Freedman and the Defendant confer off the
2 record.)

8 MR. FREEDMAN: Yes, sir. Thank you.

9 (Recess taken.)

10 THE COURT: Where are we?

18 THE COURT: Mr. Bennett, is there anything further
19 that you would like to say? I'm not indicating there should
20 be, I just don't want to miss giving you that opportunity,
21 if there is anything.

22 THE DEFENDANT: No, sir, Your Honor.

23 THE COURT: Thank you, sir.

24 || Mr. Weinman, nothing further?

25 MR. WEINMAN: That's correct, Your Honor.

1 THE COURT: We're pinned to 120 months, and
2 15 percent from that would be how much?

3 MR. WEINMAN: 102, if my math is accurate, but
4 it's always been kind of shaky.

5 MR. FREEDMAN: I think that's correct, Your Honor.

6 THE COURT: Giving effect to the 5K1.1, it is
7 ordered that a sentence of 102 months, followed by a five
8 year period of supervised release, with a finding that a
9 fine would work an undue hardship, and there will be no
10 fine, with the \$100 special assessment being payable while
11 Mr. Bennett is in custody through the financial
12 responsibility unit of that facility, with the special
13 conditions of supervised release being: That you should
14 participate in any substance abuse testing that your
15 probation officer instructs you to undertake, Mr. Bennett,
16 regardless of what it is, and if the probation officer
17 directs, you should participate in any substance abuse
18 treatment program, regardless of what that is, whether it is
19 in-patient residential treatment or even something that
20 hasn't even been found yet, whatever it is, but whatever it
21 is, even if it is just simple outpatient counseling, if
22 you're instructed to undergo substance abuse treatment, you
23 may not use alcoholic beverages from the time that treatment
24 is scheduled to start, until it is scheduled to end, and you
25 may have to pay for some of it. I hope not all of it. You

1 may have to pay for some of it.

2 Now, I am going to make the recommendation that
3 Mr. Bennett be allowed to participate in the Bureau of
4 Prisons most intensive substance abuse treatment program,
5 and you should do that. Not only might it have some effect
6 on shortening your sentence, I don't know that it will, but
7 it could, but it would be a good thing for you to do so
8 you're not placed back in a similar situation to where you
9 were back when you were arrested. I know you've had a
10 problem with marijuana in the past. You heard Mr. Shakur
11 here, I think this morning, you know, don't let that stuff
12 keep you coming back here.

13 It is obvious from listening to you testify that
14 you're a bright person, and you handle yourself very well
15 and, you know, don't let drugs or marijuana effect your
16 ability to maximize other good things that you can do.

17 Obviously if the information that you have
18 provided results in prosecutions or other things, you can
19 come back and I'll be happy to consider a Rule 35 with
20 regard to that.

21 You have ten days to appeal from the time the
22 written judgment is filed. Talk with Mr. Freedman, let him
23 know what you would like for him to do in advance of that,
24 so he's not left trying to get in touch with you when the
25 written judgment is filed trying to determine what you want

1 him to do.

2 Anything further, Mr. Freedman, that comes to your
3 mind that we should address?

4 MR. FREEDMAN: No, Your Honor. Except for a
5 motion to dismiss Count Four, but not as regards to a
6 sentence, Your Honor.

7 THE COURT: And that is dismissed. Anything
8 further, Mr. Weinman?

9 MR. WEINMAN: No, sir.

10 THE COURT: We'll adjourn until 2:00 o'clock.
11 (Court adjourned.)

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1 C E R T I F I C A T E
23 I, J. CALHOUN, RPR, United States District Court
4 Reporter for the Middle District of North Carolina, DO
5 HEREBY CERTIFY6
7 That the foregoing is a true and correct transcript
8 of the proceedings had in the within-entitled action; that
9 I reported the same to typewriting through the use of
10 Computer-Aided Transcription.11 THIS TRANSCRIPT CERTIFICATION IS VOID, IF THE
12 SIGNATURE IS NOT ORIGINALLY SIGNED BY THE COURT
13 REPORTER WHO REPORTED THIS MATTER.14
15
16
17 
1819 Date: 9-30-10
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